IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4551 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINKUMAR RATILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4551 of 1993

MR AR THACKER for Petitioner No. 1

MS MANISHA LAVKUMAR, AGP, for Respondents

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/01/2004

ORAL JUDGEMENT

1. The petitioner challenges the order dated 11th March 1991 made by the District Supply Officer under the provisions of section 6-A of the Essential Commodities

Act, 1955 confiscating a sum of Rs.25,000/- deposited in lieu of 110 bags of wheat which was seized for violation of the provisions of clause 8, 9 and 10 of the Gujarat Essential Articles Dealers (Regulation) Order, 1977 (Regulation Order of 1977) and the appellate order dated 18th September 1992 dismissing the appeal of the petitioner made by the State Government.

2. The learned counsel appearing for the petitioner contended that show cause notice dated 9th April 1990 was issued by the Authority under the provisions of Gujarat Essential Articles Dealers (Regulation) Order, 1977 but the order dated 11th March 1991 was passed under the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981 (Licencing Order of 1981). The impugned order made under section 6A of the Essential Commodities Act, 1955 is, therefore, beyond the scope of the show cause notice. He further contended that this point was specifically raised before the Appellate Authority, but the same was not dealt with and the Appellate Authority had confirmed the order purported to have been made under the Licensing Order of 1981. He also contented that no order could have been passed for violation of the Licencing Order 1981 because "wheat" has been deleted from Schedule I of that Order with effect from 27th October 1986 and the Appellate Authority has not clarified that the order made by the District Supply Officer was made in the context of the provisions of the Regulation Order of 1977 and not in respect of the violation of the provisions of Licencing Order of 1981. The learned counsel for the petitioiner also contended that there was no warrant for confiscating the entire quantity of the seized article.

3. Show cause notice dated 9th April 1990 was issued as per Annexure-A to the petition on the petitioner alleging that on 15.11.89, 110 bags of wheat which was meant for public distribution system was unauthorizedly purchased and transported during night, pursuant to the transaction effected with Harihar Commercial Corporation, when it came to be intercepted. It was alleged that it was not shown as to from what source the said quantity of wheat was purchased and no satisfactory explanation was given in respect of the purchase. The bags in which the wheat was carried had markings of Food Corporation of India and on getting the contents examined, the wheat appeared to be of the quality meant for distribution through the public distribution system. It was also alleged that purchase bills which were subsequently produced appeared to have been concocted. In the show cause notice, it was in terms mentioned that the

petitioner had violated the provisions of clauses 8, 9 and 10 of the Regulation Order of 1977 and thereby committed breach of the provisions of section 3, 8 and 9 of the Essential Commodities Act 1955.

4. It is apparent from the proceedings reflected in the order dated 11th March, 1991 at Annexure-C to the petition that an appropriate opportunity of hearing was given to the petitioner and on the basis of the material on record, it was found that no cash memo or bill was produced in respect of the essential commodity in question and the bills which were subsequently produced appeared to have been concocted. The District Supply Officer, therefore, held that there was violation of the provisions of section 3 of the Essential Commodities Act, 1955. In that order, it was observed in para 6 that even though item of wheat was deleted from the provisions of Licencing Order of 1981, that did not warrant allowing of illicit transactions in wheat by illegally diverting the wheat which was meant for distributing to needy poor sections through fair price shops. It was clearly held that when the truck was apprehended with the essential commodity, purchase bill of the 110 bags of wheat was not produced and that these bags had the markings of the Food Corporation of India. It was also found that there was discrepancy between the copy in the original bill book which was subsequently sought to be relied upon, and that the words 110 bags of wheat appeared to have been subsequently added in the purchase bill.

5. It will be noticed that though the District Supply Officer was clearly aware of the fact that the item "wheat" was deleted from the schedule of the Licencing Order of 1981 and the entire discussion in the order was directly relatable to the show cause notice which was issued under the Regulation Order of 1977, in the paragraph preceding the final order, reference was made to violation of Licencing Order of 1981, which is obviously a typographical error. Having regard to the contents of the order, it is clear that the District Supply Officer was fully conscious of the fact that the breaches were relatable to the Regulation Order of 1977 as alleged in the show cause notice. Even the Appellate Authority has decided the matter in the context of clauses 8 and 9 of the Regulation Order of 1977 and not in the context of any provisions of the Licencing Order of 1981. The attempt made in raising the contention that the order of confiscation was made in respect of the contravention of the provisions of Licencing Order of 1981 though the show cause notice was issued on the basis of violations of the provisions of Regulation Order of

1977 is, therefore, misconceived. On going through the impugned orders, it is clear that they are made on the basis of the material on record and in lawful exercise of the powers of the concerned authorities, warranting no interference by this Court.

6. It cannot be said that the order of confiscation is disproportionate, because, it has been found by the authorities that the essential commodity 'wheat' which appears in the schedule to Regulation Order of 1977 was intended for distribution through public distribution system and was diverted by the petitioner for a private transaction and in violation of clause 8, 9 and 10 of the Regulation Order of 1977.

7. In the above view of the matter, the petition is rejected. Rule is discharged with no order as to costs.

(R.K.Abichandani,J.)

(vjn)